

PRESIDENT: I am trying to get some order, Senator DeCamp. It is very noisy in the rear of the Chamber and in the front. Could we hold some of the din down please.

SENATOR DeCAMP: Okay, I think I will just finish up very quickly. So Senator Chambers has distorted and inaccurately stated repeatedly on this floor this state of the art thing. I have just tried to clarify it for you. I would go on to say that his amendment, which I have had checked out, again by both sides, would actually work against him. It would tend to destroy the best state of the art reasonably available argument by establishing rebuttable presumptions instead of defenses and so I would urge you to reject his amendment, if only to protect him from himself of hurting the plaintiffs. That is what that is in there for and this would tend to damage it so I urge you to reject it.

PRESIDENT: Senator Kelly.

SENATOR KELLY: Mr. President, I would just like to add a little bit in the idea of the state of the art. And the state of the art is not necessarily what is being done. The state of art also includes the knowledge that industry and scholars have on whatever we are talking about, metallurgy or arithmetic or be what it may, whether the manufacturer has chosen to use that is the choice and design of his product but it is not a state of the art of metallurgy or workmanship or fastening or bearings. It is what he chose to use and he will be negligent in his design, if it does not line up with the available state of the art which is not necessarily the industry standard at that time.

PRESIDENT: Senator Chambers, would you close please.

SENATOR CHAMBERS: Senator DeCamp, is this...Senator DeCamp is gone again but I will tell you why they could know that a gas tank that blew up in the Pinto was not properly constructed because they had other gas tanks to compare it to. But suppose the industry agreed, and insurance companies have been concerned about bills like this, because it encourages industries to be careless, to maintain low standards so that the state of the art does not reach a level high enough to require modifications. Now, Senator Kelly, all they have to argue, if they all get together, is that it's not reasonable to say that the industry ought to do this thing and the demonstration of it is the fact that nobody in the industry is doing it. They could say that air bags represents a method of protecting people against crashes but I venture to say that under a state of the art argument you couldn't indicate or prove or establish that the fact that an air bag might protect a person against injury better than a seat belt, the absence of the air bag is the basis for recovering under this law. There are a lot of things which are known. A lot of things have not been adequately tested. They have not been demonstrated. So all they have to say is well that is a theoretical principle, but as a workable, practical model, we don't have that in the industry and perhaps it might be something which can be utilized in the future and maybe some testing ought to occur but what a lot of these companies do, they are willing to take the chance on going to court and maybe winning or maybe losing rather than spend the amount of money on a large number of products to bring it up to a